BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PARAMOUNT DEVELOPMENT ASSOCIATES, INC.)

Appearances:

For Appellant: Robert E. Higgins
Tax Counsel

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Paramount Development Associates, Inc., against proposed penalty assessments in the amounts of $598.24, $762.80, $2,325.69 and $2,754.74 for the income years 1973, 1974, 1975, and 1976, respectively, and pursuant to section 26075, subdivision (a),. of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Paramount Development Associates, Inc., for refund of penalty in the amount of $2,703.50 for the income year 1977.

The sole issue. for our determination is whether respondent's imposition of late filing penalties was proper.-

Appellant, a Massachusetts corporation, is a wholly-owned subsidiary of Perini Land and Development Company (hereinafter "PLD"), a Delaware corporation. PLD, in turn, is a wholly-owned subsidiary of Perini Corporation (hereinafter "Perini"), a Massachusetts corporation. During the years at issue, both parties agreed that appellant's California taxable income was properly computed by separate accounting.

In 1969, appellant acquired a ten percent intere-st in two California partnerships (hereinafter "partnerships") which owned and operated apartment and commercial buildings in San Francisco. Appellant, did not file California corporation franchise tax returns reporting the California source income derived from the partnerships. During a 1978 audit of Perini, respondent learned of appellant's receipt of income derived from the operations of the partnerships. Accordingly, on September 12, 1978, respondent determined that the income appellant derived from the partnerships was taxable in California pursuant to section 23040 of the Revenue and Taxation Code. In addition, respondent determined that penalties were due pursuant to section 25931 of the Revenue and Taxation Code because of appellant's failure to file timely returns.

Section 25931 states, in relevant part, as follows:

> If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is'due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total addition shall not exceed 25 percent of the tax. ...

Appellant conceded that the assessment of tax was proper, but has protested the assessment of the penalties assessed in 1973, 1974, 1975, and 1976, and has filed a claim for refund of the penalty paid for 1977. Respondent's denial of those protests and that claim gave rise to this appeal.

Appellant contends that the untimely filing of its California tax returns was due to reasonable cause and not willful neglect. Appellant argues that the law regarding its taxability in California during the years at issue is unclear and that its good faith, but mistaken, belief that it owed no tax to California constitutes reasonable cause for its failure to file timely returns during the years at issue. In addition, appellant argues that its reliance upon its certified public accountant's advice that it need not file returns and the complexity involved in complying with the variety of rules affecting state taxation of multi-jurisdictional corporate income' likewise constitute such reasonable cause.

It is well established that the taxpayer has the burden of proving that late filing of its tax return was due to reasonable cause and not due to willful neglect. (C. Fink Fischer, 50 T.C. 164 (1968).) Both conditions must exist. (Rogers'Hornsby, 26 B.T.A. 591 (1932); Appeal of Citicorp Leasing,Inc., Cal. St. Bd. of Equal., Jan. 6, 1976.) To establish the existence of reasonable cause, the taxpayer must show that the failure to file occurred despite the exercise of ordinary business care and prudence. (Sanders v. Commissioner, 225 F.2d 629 (1955), cert. den., 350 U.S. 967 [100 L.Ed. 839] (1956); Appeal of Loew's San Francisco Hotel Corp., Cal. St. Bd. of Equal., Sept. 17, 1973.)

Several federal cases indicate that reasonable cause for failure to file a timely return may exist if the law regarding taxability is unclear and there is reasonable doubt as to how the legal issues will ultimately be resolved. (See, e.g., J. T. Wurtsbaugh, 13 T.C. 1059 (1949).)

In the instant case, we do not believe that ambiguity in the law existed so as to justify appellant's failure to file returns. (See, e.g., Appeal of Putnam Fund Distributors, Inc., et al., Cal. St. Bd. of Equal., Dec. 6, 1977.) Indeed, during the years at issue, the law was clear that rents from real property located in this state constituted California source income and were taxable in this state. (See, e.g., Appeal of H. F. Ahmanson & Company, Cal. St. Bd. of Equal., April 5, 1965; Appeal of The Inn at La Jolla, Inc., Cal. St. Bd. of Equal.., Dec. 18, 1964.) Moreover, it is equally clear that the source of a partner's rental income is where the property is located and where the partnership is carried on. (Appeal of H. F. Ahmanson & Company, supra.)

The record clearly establishes that the income generated from appellant's partnership income was derived from a California source. Accordingly, we find that during the years at issue the law was clear requiring that the income from appellant's California partnerships be taxed in this state. (Cf. Appeal of H. F. Ahmanson & Company, supra.) Moreover, while appellant might well have had good reason to believe that its accounting firm was qualified to do a competent job, this fact does not relieve appellant of the ultimate responsibility for the timely filing of its returns. (Appeal of Citicorp Leasing, Inc., supra.) Likewise, the difficulty in complying with a variety of rules affecting multi-jurisdictional corporate income does not constitute reasonable cause for failure to file. (Appeal of Avco Financial Services, Inc., Cal. St. Bd. of Equal., May 9, 1979.

For the reasons set forth above, we conclude that appellant's failure to file timely returns was not due to reasonable cause. Therefore, respondent properly determined that the penalty for late filing applies and its action must be sustained.

Appeal of Paramount Development Associates, Inc.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Paramount Development Associates, Inc., against proposed penalty assessments in the amounts of $598.24, $762.80, $2,325.69 and $2,754.74 for the income years 1973, 1974, 1975, and 1976, respectively, and pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax.Board in denying the claim of Paramount Development Associates, Inc., for refund of penalty in the amount of $2,703.50 for the income year 1977, be and the same are he'reby sustained.

Done at Sacramento, California, this 14th day of December , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis,' Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Richard Nevins , Member

*Walter Harvey , Member

_____ , Member

*For Kenneth Cory, per Government Code section 7.9